IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL FROM ORDER NO.702 OF 2004

Gururaj S. Yallati ..Appellant.

V/s.

Smt.Shardabai Apparao Digge & Ors. ..Respondents.

Mr.G.S. Godbole for appellant.
Mr.K.Y.Mandlik for respoondent No.1.
Mr.S.M. Gorwadkar for respondent Nos.2, 3, 6 to 8.

CORAM: V.C. DAGA, J.

DATED: 16TH SEPTEMBER, 2004

P.C. :-

. Heard finally by the consent of the parties. Perused appeal record.

2. Respondent No.1 is represented by Mr.Mandlik; whereas respondent Nos.2 to 8 are represented by Mr. Gorwadkar. So far as respondent No.9 is concerned, in spite of service of notice with the R.P.A.D., he is absent. Acknowledgement evidencing service is on

record. The other respondent Nos.10 to 14 though served with the notice of hearing on admission, none of them are present either in person or through their counsel. Mr.Godbole seeks final disposal of the appeal. In the absence of respondent Nos.10 to 14 appeal cannot be disposed of finally. Other respondents have no objection for final disposal of this appeal at this stage. In this view of the matter, Mr.Godbole learned Counsel appearing for the appellant seeks permission to delete respondent Nos. 10 to 14 from array of parties for the purposes of this appeal. The deletion is allowed at the risk of the appellant. Amendment in the cause title of the memo of appeal to be carried out during the course of the day.

FACTUAL MATRIX

3. Factual matrix reveal that this appeal is directed against the order dated 14/7/2004; wherein the application under Order 39 Rule 1 & 2 of the C.P.C.(Exhibit-5) came to be allowed. The appellant / original defendant No.14 has been restrained, by an order of temporary injunction, from doing any constructions and/or making any changes and/or creating any third party interest in the suit

property described in para 1A of the plaint until the final decision of the suit. This order is the subject matter of challenge in this appeal.

4. During the pendency of the appeal, when the application for interim relief was heard this Court was pleased to direct rule returnable after 4 week. In the meanwhile, ad-interim relief subject to deposit of Rs.5,00,000/- with the trial Court within 2 weeks was granted. Mr.Godbole, learned counsel appearing for the appellant submits that the terms of the order have been complied with. The amount of Rs.5,00,000/- has been deposited with the trial Court.

5. If one turns to the plaint, the suit is for partition and separate possession. The plaintiff is claiming 1/14th share in the suit property.

SUBMISSIONS

6. Mr.Mandlik, learned counsel for the appellant submits that in view of the interim order of this Court dated 4/8/2004 directing deposit of Rs.5,00,000/-, the said amount of Rs.5,00,000/- is sufficient to take care of the interest of the

appellant. In this view of the matter, he submits that the appeal may be disposed of finally in converting the interim order of this Court dated 4/8/2004 in a final order in appeal. At this stage, Mr.Gorwadkar appearing for the respondents submits that so far as the rights of other co-owners are concerned, their right to claim interim relief should be kept open.

CONSIDERATION

7. Having heard rival parties, if the inter**est of the** plaintiff is secured by the deposit of Rs.5,00,000/-, then, in my view, there should be no difficulty to make final order in appeal in terms of interim order. In that view of the mattr, it is not necessary to prevent and/or injunct the defendant No.14 from acting upon the agreement of development. The impugned order can be quashed and set aside subject to the trial Court holding an amount of deposit of Rs.5,00,000/- during the pendency of the suit with liberty to deal with the same or part thereof while disposing of the suit finally.

8. Needless to mention that the disposal of this appeal shall not come in the way of other defendants/

respondent Nos.2, 3 and 6 to 8. Their right to claim interim relief is not a subject matter of scrutiny in this appeal. If they decide to move trial Court for any interim relief, it will always be open for the trial Court to consider and decide their claim on its own merits in accordance with law.

9. In the result, impugned order is quashed and set aside, subject to the condition that the amount of deposit of Rs.5,00,000/- made by the appellant shall continue to remain in deposit with the trial Court till the the suit is disposed of. It would be open for the trial Court to pass appropriate decree at the time of the final disposal of the suit. If necessary, trial Court would be free to award share of the appellant in the suit property in terms of money and may direct utilisation of amount of Rs.5,00,000/- or part thereof and at the same time it shall also be free to deal with the balance amount, if any, in accordance with law.

10. Needless to mention that all rival contentions on merits are left open.

11. Appeal stands disposed of with no order as to costs.

. Parties to act on ordinary copy of the order duly authenticated by the Associate/C.S.

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